

Letter from the European Ombudsman to the European Commission on how it assessed human rights impacts before providing support to African countries to develop surveillance capabilities

Correspondence - 30/11/2021

Case 1904/2021/MHZ - **Opened on** 30/11/2021 - **Decision on** 28/11/2022 - **Institution concerned** European Commission (No further inquiries justified) |

Dear President,

I have received a complaint against the European Commission concerning whether it carried out human rights impact assessments before supporting non-EU countries in developing surveillance capabilities under the Emergency Trust Fund for Africa (EUTF) [1] . You will find attached a copy of the complaint [2] .

The complainants consider that the Commission did not fulfil its obligation to carry out human rights risk and impact assessments prior to engaging in any form of transfer of surveillance capabilities to the authorities of third countries under the EUTF. I have decided to open an inquiry into this complaint.

Between September 2019 and June 2020 the complainants raised their concerns with the Commission regarding how “ *the processing of biometric data [under the EUTF] must [...] only be implemented after a thorough risk assessment regarding its security and be subject to ongoing security audits*”. The Commission replied that “ *projects supported by the EU assess whether there are any gaps in the legislation, including on data protection and privacy. Additionally, projects support the Government in drafting legislation which provides legal basis for biometric databases*”.

The Commission’s reply refers to the fact that EUTF projects “ *assess whether there are any gaps in the legislation, including on data protection and privacy*”, but it does not provide further clarifications on how and when these assessments are carried out. I have thus concluded that it would be useful to receive a written reply from the Commission on the following issues:

1. Does the Commission carry out any kind of human rights risk or impact assessments prior to engaging in activities that support non-EU countries in developing surveillance capabilities under the EUTF? If not, could the Commission explain why it does not



consider it appropriate or necessary to carry out such assessments?

2. Could the Commission explain what other measures it puts in place to protect human rights in the context of projects implemented under the EUTF?

Please note that I am likely to send your reply and related enclosures to the complainants for comments [3] . We may also decide to publish your reply. The responsible case-handler is Angela Marcos Figueruelo.

I would be grateful to receive the Commission's reply by **10 March 2021** .

Yours sincerely,

Emily O'Reilly European Ombudsman

Strasbourg, 30/11/2021

[1] https://ec.europa.eu/trustfundforafrica/index_en [Link]

[2] See pages 1-40 of the complaint. The remaining aspects of the complaint have been deemed inadmissible because the complainants did not fulfil the appropriate prior administrative approaches.

[3] If you wish to submit documents or information that you consider to be confidential, and which should not be disclosed to the complainant, please mark them 'Confidential'. Encrypted emails can be sent to our dedicated mailbox. Information and documents of this kind will be deleted from the European Ombudsman's files shortly after the inquiry has ended.